THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.1458 of 2005

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3rd March 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 11.04.2005 in W.P.NO.21324 OF 2004 on the file of the High Court.)

Between:

1. The Regional Joint Director of School Education, Kadapa Region, Kadapa, Kadapa District.

And one other.

...APPELLANTS

AND

1. M. Victor Vijay Kumar, S/o. Late M. Joseph,
Hope High School, Madanapalli, Chittoor District.

And two others.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.1458 OF 2005

JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard both the sides.

The appellants are respondent Nos.1 and 2 in Writ Petition No.21324 of 2005 filed by writ petitioners/respondent Nos.1 and 2 herein, where under they sought a writ of mandamus to declare the action of the appellants in not approving their appointment as arbitrary, illegal and contrary to the very scheme of compassionate appointment and further sought a direction to approve their appointment and pay the salaries from 17.09.2002.

The facts in brief are that the father of the first respondent and the father of the second respondent, who were the employees of the Institution-the third respondent

herein, died on 26.08.1998 and 21.11.1997 respectively. Therefore, respondent Nos.1 and 2 sought appointment on compassionate grounds. Accordingly, they were appointed and are being continued in service. The main grievance of the Writ Petitioners was that in spite of the said appointment and continuity of service, their appointment has not been approved though the Institution duly recommended the same. Hence, the Writ Petition. Contesting the claim of respondent Nos.1 and 2, the case of the appellants before the learned Single Judge was that there are no clear vacancies and therefore, the question of approval does not arise. Even otherwise, there is no such proposal for filling up the vacancies. Thus, the question of consideration of respondents' case does not arise. Considering these and other submissions made on either side, the learned Single Judge allowed the Writ Petition directing the appellants to approve the appointment of respondent Nos.1 and 2 in accordance with the rules.

The learned Government Pleader for School Education appearing on behalf of the appellants submitted that having regard to the very scheme and the proposal, if any made by the Institution, the grievance is only at the instance of the Institution but not at the instance of the employees directly and they have no locus. Even otherwise, there is no proposal for filling such clear vacancies and therefore, their case cannot be considered for approval.

Sri Kasa Jagan Mohan Reddy, the learned counsel appearing on behalf of respondent Nos.1 and 2 sought to sustain the order of the learned Single Judge mainly on the ground that they have been already appointed and continuing as such

and there is due recommendation by the Institution and therefore, there is no other option left except to approve the same.

Considering the submissions made across the bar, *prima facie*, we are of the view that in the nature of things, especially when the Institution seeks approval of the appointment, the grievance, if any, would be only at the instance of the Institution, but not at the instance of the employees. This Court has been repeatedly taking a view that in such circumstances, the employees cannot have any locus to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India and seek any direction. Admittedly, in this case, the Institution has not come before the Court nor there is any grievance spoken to on their behalf. It is only the employees, who are fighting for the approval. Though it has been stated on behalf of respondent Nos.1 and 2 that there is recommendation from the Institution for approval of their appointment, the learned Government Pleader for School Education submitted that such recommendation is not in regard to any clear vacancies. He further fairly states that as and when there is due recommendation in the clear vacancies, their cases will be considered.

The learned counsel appearing for respondent Nos.1 and 2 is unable to explain that the posts in which respondent Nos.1 and 2 were appointed arise out of clear vacancies or not. In fact it is in serious dispute. Having regard to the fact that respondent Nos.1 and 2 cannot seek any such enforcement of their claim by way of a Writ and in the absence of any such grievance by the Institution, the only choice left to respondent Nos.1 and 2 is to file a representation before the appellants pointing out all these aspects and also before the Institution to make due

recommendation whereupon the same will be considered and disposed of on merits and in accordance with law. In view of the same, we do not find any justification in the direction issued by the learned Single Judge, more so, in a Writ of Mandamus.

The Writ Appeal is allowed subject to the above observations. It shall be open for respondent Nos.1 and 2 to make a representation before appellant No.1 comprehensively pointing out all these aspects and on receipt there of, the same shall be considered and disposed of in accordance with law by appellant No.1. It is also open to appellant No.1 to make necessary recommendations in clear vacancies on which respondents' case can as well be considered. No costs.

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(B.PRAKASH RAO, J)

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(D.APPA RAO, J)

3rd March 2006

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